**HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Criminal Misc. Application No. 451 of 2005**

1. Sanjay Ghai
   S/o late Sri D.N. Ghai
   R/o village Ballupur
   Dehradun
2. Smt. Hema Bora
   W/o Sri Arjun Singh Bora
   R/o village Ajabpur Kala
   District Dehradun
3. Manoj Tolia @ Munna
   S/o Sri B.S. Tolia
   R/o Indra Colony
   Dehradun

.....Applicants

Versus

1. State of Uttaranchal
   Through I.O. of case crime No. 89/2005
   P.S. Sahaspur
   Tehsil Vikas Nagar
   District Dehradun
2. Sri Chandan Singh Varswal
   S/o Sri Parsharam
   R/o village Jhazara
   P.S. Sahaspur
   Dehradun

.....Respondents

**Hon'ble J.C.S. Rawat, J.**

Heard Sri N.C. Gupta learned counsel for the applicants and Sri Nandan Arya learnred A.G.A.

2. The petition under section 482 Cr.P.C. has been filed for quashing the chargesheet dated 4.6.2005 in case crime No. 849/2005 under section 147, 323, 504, 506, 341 I.P.C. and 3(i)(x) S.C. & S.T. Act P.S. Sahaspur District Dehradun and order dated 13.6.2005 passed by the Judicial Magistrate- Ist in criminal case No. 849/2005.

3. The factual position in a nutshell is that on 30.4.2005 one-Bhim Singh Khathait (Patwari) was caught red handed by the Vigilance Officer while taking

bribe at the instance of the respondent No.2. When the complainant-respondent No.2 was coming back to his house, the applicants met him and started beating. The accused-applicants hurled abuses to the respondent No.2 and they used the word 'Chamatto' against the complainant. The respondent No.2 belongs to the scheduled caste community. Respondent No.2-complainant, then, lodged an FIR against the applicants in the police station Sahaspur, Dehradun and the same was registered as case crime No.89/2005 under section 147, 323, 504, 506 I.P.C. and 3(i) (x) S.C. & S.T. Act. The police investigated the matter and submitted the chargesheet before the court. Thereafter, the learned Magistrate took cognizance against the applicants vide order dated 31.8.2005. Feeling aggrieved by this, the present petition has been preferred by the applicants.

3. The learned counsel for the applicants contended that no independent witnesses have been mentioned in the FIR and it was an afterthought story. The learned counsel for the applicants contended that allegation made in the FIR does not disclose the commission of offence. The learned counsel for the applicants further contended that since applicant No.1 & 2 had refused to give their evidence against Bhim Singh Khathait (Patwari), who was caught red handed by the Vigilance Officer while taking bribe, hence they were falsely implicated in this case. The learned A.G.A. refuted the contention and contended that there was no independent witnesses of the incident. So far as the independent witnesses are concerned, the trial court has to see whether the evidence adduced by the complainant is reliable or not. Whereas the contention of the learned counsel for the applicants with regard to

the constituting any offence is concerned, the FIR clearly discloses the commision of offence. It has been mentioned in the FIR that the applicants hurled abuses and used the work 'Chamatto' against the respondent No. 2. Perusal of the FIR and record placed before this Court clearly disclose the cognizable offence against the applicants. The learned A.G.A. contended that this Court cannot embark upon the evidence, which has to be appreciated by the court below only. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr. P.C., it is not possible for this Court to act as if it is a trial court. This Court cannot evaluate the evidence at this stage.

4. In view of the above, the petition lacks merit and is dismissed.

**(J.C.S. Rawat, J.)**

Dated 20.07.2005
LSR